and proceeds to endeavour to win it, and thereby makes his leg so much worse that it takes an additional six months to recover, he is only entitled to damages for such part of his suffering as was not due to such heedless conduct. On the other hand, it could scarcely be suggested that the fact of a man who is suffering from the injury to his eye glancing at a newspaper occasionally before his eye has quite regained its usual strength would be wanton, heedless, or careless action on his part. The jury must look at all the circumstances of the case, the medical advice received, the need for action, the usual character of what is actually done, and the precautions taken during the doing of it. The injured person need not act with perfect knowledge and ideal wisdom, but, on the other hand, cannot claim damages for such injuries as are really due to wanton, heedless, or careless conduct on his own part. If what is done reasonably and carefully does augment the injuries, that may be regarded as a natural consequence of the accident."

The question is whether the continued disability of the plaintiff is attributable exclusively to the accident or is due to his own unreasonableness in refusing to submit to a second operation. The refusal of the plaintiff to undergo a second operation was not only not pleaded but also Mr. Ratnasingam (P.W. 1) was not cross-examined at all on the matter. Mr. Ratnasingam, naturally, could not guarantee any effective results in the second operation, if performed, and the plaintiff did not want to undergo such an operation because to him success of the operation was not certain. I do not consider that on that meagre evidence before me I can hold that the plaintiff was acting unreasonably (*Tutton* v. *Majestic Owners*[7]). There may be cases where due to the act of the third person the injury may be aggravated and the circumstances may render the damage too remote. Damages may, in fact, be liable to be reduced on grounds of contributory negligence, remoteness or failure to mitigate, and it may often be difficult to draw a line between the respective areas of these grounds. I am fortunately spared that task in this case.

The plaintiff was essentially a sub-contractor and although in his evidence he did state that he was working as a mason himself in the execution of these sub-contracts, yet I do not attach very much weight or significance to that part of his statement. A sub-contractor is likely to make more gain in devoting his time to procuring sub-contracts, creating contacts and generally supervising the work than by being pinned down to the manual labours of a mason. At the most the plaintiff might have on occasions rendered some short-time assistance or have temporarily acted as a relief mason and I have taken that into account in assessing the damages. I have seen the plaintiff and his arm. He may not be able to perform the duties of a mason but that does not mean he is incapable of doing some other work or earn his livelihood in some other field of activity.

I have considered the authorities on quantum quoted by Mr. Murphy. General damages cannot be awarded by way of restitution but only by way of compensation and do include loss of earnings. In fact general damages include damages in respect of injury to the plaintiff's health, the loss of his limb, if any, pain and suffering, his inability to return to his normal occupation and every other form of loss which he may suffer and which is not covered by special damages. I am of the view that I have in fact made quite a liberal award to the plaintiff. It is not necessary for me to analyse how I have arrived at the various figures.

Order accordingly.

Solicitors: *Murphy & Dunbar; Laycock & Ong.*

LIN AH MOY v. LEE CHENG HOR & ORS.

[F.C. (Ong C.J. (Malaya), Gill and Ali F.JJ.) July 21, 1969]

[Ipoh — Federal Court Civil Appeal No. X. 24 of 1969]

Companies — Private holding company — Transfer of shares from brother to brother — Family arrangement.

Family arrangement — Transfer of shares — Consideration — Presumption of advancement — Resulting trust — Evidence Ordinance, 1950, s. 92.

This appeal arose out of an action concerning a dispute in a Chinese family over 300 $1 shares in the capital of Rimau Omnibus Co. Ltd., a private holding company. The family consisted of five brothers named Ong Kong Chu, Ong Kong Seng, Ong Kong Pong, Ong Kong Chuan and Ong Kong Chee in order of seniority in age. Prior to 1954 the first four brothers were the registered owners of 1,465, 300, 245 and 342 shares respectively in the holding company, with the youngest brother having no shares in his name at that time. On February 16, 1954 the eldest brother Ong Kong Chu transferred 1,265 of his shares to the youngest brother Ong Kong Chee, keeping 200 shares in his name to enable him to retain his position as a director of the company. Within the next two days Ong Kong Seng, Ong Kong Chuan and Ong Kong Pong also transferred their entire holdings to Ong Kong Chee, with the result that the eldest brother in the family remained the registered owner of 200 shares and the youngest brother (hereinafter referred to as the first defendant) became the registered owner of 2,152 shares. On April 26, 1955 the first defendant executed an instrument appointing Ong Kong Chu as his attorney in respect of the shares transferred to him with powers, *inter alia*, to receive and give effectual discharges for all moneys derived therefrom and "to sell assign transfer and to mortgage for any purpose and for such price or other consideration (whether pecuniary or not) or sum of money and upon such terms and conditions the said shares as the said attorney shall think fit." This power of attorney was never revoked and remained operative until the first defendant executed a transfer of the entire 2,152 shares to Lin Ah Moy (f) (hereinafter referred to as the second defendant), the wife of Ong Kong Chu, on or about December 10, 1959. The four transfers in 1954 were expressed to be for a consideration of $2 for a $1 share and the total amount purported to have been paid by the first defendant was $4,304. The transfer in 1959 of the 2,152 shares from the first defendant to the second defendant was also expressed to be in consideration for the same amount of $4,304. On April 27, 1964 Ong Kong Seng commenced this action as the original plaintiff against the first and second defendants claiming for a declaration that the 300 $1 fully paid up shares and numbered from 317 to 616 were held by each of the defendants as a trustee for him, and for an account of the dividends and income received by them during the relevant period. In his statement of defence the first defendant admitted that the 300 shares were transferred to him in trust for the plaintiff and that all dividends received during the period when the said shares stood registered in his name were paid to Ong Kong Chu who, as the then head of the family, was keeping a joint family account. He did not deny paragraph 4 of the plaintiff's statement of claim to the effect that in or about the month of December, 1959 he, by the direction of the plaintiff, transferred the said shares into the name of the second defendant with her concurrence, to the intent that the same should be held by her as a trustee for and on behalf of the plaintiff. The second defendant denied in her statement of defence that the said shares were transferred to her to be held by her in trust for the plaintiff, her defence being that she purchased 2,152 shares, amongst

which were included the shares in dispute, from the first defendant for $2,152.

The trial judge found that there was no consideration on the 1954 and 1959 transfers and gave judgment for the plaintiff against the second defendant, the appellant herein.

Held, dismissing the appeal: (1) the proviso to section 92 of the Evidence Ordinance, 1950 permits the admission of evidence relating to want or failure of consideration;

(2) the plaintiffs and the first defendant were not estopped from denying the truth of the contents of the memoranda of transfer;

(3) there was ample evidence in this case that the transfer of the shares were made at the suggestion of the second defendant's husband who was the head of the family;

(4) on the face of it, there was nothing fraudulent about the transfers. There was ample evidence for the learned trial judge to come to the conclusion that the transfers were made in trust;

(5) there can be no question of a presumption of advancement in the case of a transfer from a brother to a brother or from a brother to his brother's wife. In those circumstances the court must find a resulting trust in favour of the original transferor;

(6) a transfer without consideration creates a rebuttable presumption of a resulting trust; in this case this presumption was not rebutted on the evidence;

(7) as the learned trial judge found as a fact that the second defendant was not a *bona fide* purchaser for value, this court could not possibly disturb that finding of fact or draw any inferences adverse to that finding.

Cases referred to:-

(1) *Tsang Chuan* v. *Li Po Kwai* [1932] A.C. 715.

(2) *Powell & Wife* v. *Streatham Manor Nursing Home* [1935] A.C. 243.

FEDERAL COURT.

W. S. W. Davidson for the appellant.

Chan Nyarn Hoi for the 1st & 2nd respondents.

Respondent No. 3 served, not participating.

Gill F.J. (delivering the judgment of the Federal Court): This appeal, which we dismissed stating that we would give our reasons later, arose out of an action in the High Court at Ipoh concerning a dispute in a Chinese family over 300 $1 shares in the capital of Rimau Omnibus Co., Ltd., a private holding company having shares in the General Omnibus Co., Perak.

The family consisted of five brothers named Ong Kong Chu, Ong Kong Seng, Ong Kong Pong, Ong Kong Chuan and Ong Kong Chee in order of seniority in age. Prior to 1954 the first four brothers were the registered owners of 1,465, 300, 245 and 342 shares respectively in the holding company, with the youngest brother having no shares in his name at that time.

On 16th February, 1954 the eldest brother Ong Kong Chu transferred 1,265 of his shares to the youngest brother Ong Kong Chee, keeping 200 shares in his name to enable him to retain his position as a director of the company. Within the next two days Ong Kong Seng, Ong Kong Chuan and Ong Kong Pong also transferred their entire holdings to Ong Kong Chee, with the result that the eldest brother in the family remained the registered owner of 200 shares and the youngest brother (hereinafter referred to as the first defendant) became the registered owner of 2,152 shares.

On 26th April, 1955 the first defendant executed an instrument appointing Ong Kong Chu as his attorney in respect of the shares transferred to him with powers, *inter alia*, to receive and give effectual discharges for all moneys derived therefrom and "to sell assign transfer and to mortgage for any purpose and for such price or other consideration (whether pecuniary or not) or sum of money and upon such terms and conditions the said shares as the said attorney shall think fit." This power of attorney was never revoked and remained operative until the first defendant executed a transfer of the entire 2,152 shares to Lin Ah Moy (f) (hereinafter referred to as the second defendant), the wife of Ong Kong Chu, on or about 10th December, 1959.

The four transfers in 1954 were expressed to be for a consideration of $2 for a $1 share and the total amount purported to have been paid by the first defendant was $4,304. The transfer in 1959 of the 2,152 shares from the first defendant to the second defendant was also expressed to be in consideration for the same amount of $4,304.

On 27th April, 1964 Ong Kong Seng commenced this action as the original plaintiff against the first and second defendants claiming for a declaration that the 300 $1 fully paid up shares and numbered from 317 to 616 were held by each of the defendants as a trustee for him, and for an account of the dividends and income received by them during the relevant period.

In his statement of defence the first defendant admitted that the 300 shares were transferred to him in trust for the plaintiff and that all dividends received during the period when the said shares stood registered in his name were paid to Ong Kong Chu who, as the then head of the family, was keeping a joint family account. He did not deny paragraph 4 of the plaintiff's statement of claim to the effect that in or about the month of December, 1959 he, by the direction of the plaintiff, transferred the said shares into the name of the second defendant with her concurrence, to the intent that the same should be held by her as a trustee for and on behalf of the plaintiff.

The second defendant denied in her statement of defence that the said shares were transferred to her to be held by her in trust for the plaintiff, her defence being that she purchased 2,152 shares, amongst which were included the shares in dispute, from the first defendant for $2,152.

In due course, the first defendant obtained an order of court to make Ong Kong Chu the third party to the action, but this order was not pursued and Ong Kong Chu obtained an order of court to set aside the third party notice before the trial of the action. The original plaintiff having died in the meantime, Lee Cheng Hor (f) and Ong Chim Choy as the administrators of his estate were substituted as the present plaintiffs. The action came up for trial before Chang Min Tat J. who on the evidence before him found that there was no consideration on the 1954 and 1959 transfers and gave judgment on 21st February, 1969 for the plaintiff as prayed against the second defendant. This appeal was brought by her against that judgment.

The evidence for the plaintiffs was simple and straightforward. Ong Chim Choy, the second plaintiff in his capacity as the administrator of the estate of his deceased father, said that he had personal knowledge of the matters in the statement of claim from what his father had told him. Ong Kong Pong (P.W. 4) testified that he transferred his shares at the request of his eldest brother Ong Kong Chu to the first defendant as trustee and that he received no payment for the transfer from the first defendant or from any one else. He further said that he did not receive any dividends from the company or from the first defendant and that he did not know even then that in 1959 the first defendant had transferred his shares to the second defendant, and he maintained that his original shares still belonged to him. Ong Kong Chuan (P.W. 5), however, said that he transferred his shares to the first defendant by way of sale at $2 per share and that he received the money.

As regards payments of dividends from 1954 to 1959, the company's secretary gave evidence to say that cheques were drawn in the name of the first defendant but that the dividend receipts were signed by Ong Kong Chu and others. After 1959 such receipts were signed by the second defendant and sometimes by her husband, Ong Kong Chu. He produced two sets of letters which showed that the dividends declared on the shares ranged between 200% and 600% from 1954 to 1963.

The first defendant repeated in his evidence what he had said in his statement of defence. He went on to say that he stopped schooling in 1947 when he was about 17 years old and worked as a waiter in a coffee shop until 1949 and thereafter as a bus conductor with an average income of $110-$120 a month inclusive of overtime. He maintained that he did not have $4,304 in 1954 to buy the shares and he denied receiving $4,304 in 1959 from the second defendant and buying any property with that or any other sum. He admitted, however, that in 1962 he bought a plank house for between $1,000 and $2,000 from monies saved by him and from loans.

Ong Kong Chu (D.W. 2) gave evidence after the first defendant, his story being that he had sold all but 200 of his shares to the first defendant in 1954 and that his wife bought shares from the first defendant in 1959 at $2 a share with her own money which he saw her handing over to the first defendant at the back portion of No. 47, Hale Street, Ipoh, of which he was the tenant, when he was repairing a bicycle puncture, prior to the execution of the transfer at the office of Mr. R. G. Suppiah, an advocate and solicitor.

Mr. R. G. Suppiah (D.W. 3) was called as the first witness for the second defendant after her counsel had applied for and obtained an order to amend paragraph 6 of her statement of defence by substituting "$4,304" for '$2,152' as the consideration for the purchase of the shares. He testified that, apart from identifying his signature on the document of transfer, he could not remember anything about the transaction, although he said that it was his invariable practice to ascertain from the parties to any deed or agreement their knowledge of what they were executing. He further stated that he did not think that the transfer was prepared by him or by his office. His former clerk, Bahari bin Allang Musa (D.W. 4), however, gave positive evidence that he prepared the document of transfer and had it explained in Malay to the parties before it was executed and that it was, in fact, a sale for valuable consideration.

The second defendant gave evidence at length, the substance of her evidence being that one morning the first defendant came to her house and said that he wanted to sell his shares at $2 per share. She did not bargain with him as he was a brother-in-law, nor did he say why he wanted $2 for $1 share. She agreed to buy the shares and subsequently paid over the purchase money to him in a shop before the execution of the transfer at Mr. Suppiah's office, where she was asked whether the purchase money had been paid and she replied "Yes.".

With regard to the evidence of Bahari (D.W. 4), the learned trial judge stated in his grounds of judgment that he had no hesitation in rejecting it. His Lordship added that, apart from the patent discrepancies, it seemed to him incredible that after a lapse of nearly 10 years the witness should remember in such clear details what was in fact a small and minor incident in the course of his principal's legal business. It is to be observed that there was no evidence that the consideration money was paid in Mr. Suppiah's office and, as his Lordship remarked, this witness's evidence did not exclude the possibility of the parties acknowledging for the sake of convenience something which was not the truth.

The first ground of appeal urged on behalf of the appellant was that the learned trial judge should not have admitted or alternatively given weight to the oral evidence of lack of consideration for the two transfers since such evidence contradicted the plain words of the two memoranda of transfer. The short answer to that is that there is no rule of evidence which prohibits the admission of such evidence. On the contrary, the proviso to section 92 of the Evidence Ordinance, 1950 clearly permits the admission of evidence relating to want or failure of consideration. For the same reason, we could find no substance in the appellant's second ground that the learned trial judge should have held that the plaintiffs and the first defendant were estopped from denying the truth of the contents of the said memoranda of transfer.

For the two grounds of appeal mentioned above, counsel for the appellant relied on the decision of the Privy Council in *Tsang Chuen* v. *Li Po Kwai*.[1] That was a case in which the respondent sued in the Supreme Court of Hong Kong for a declaration that he was entitled to certain leasehold property in Hong Kong free from a mortgage to the appellant on one undivided moiety of the property, and claimed a reassignment to him of the undivided moiety. There was no dispute regarding the appellant having advanced a sum of $25,000 paid in respect of the mortgage which was duly registered under the Hong Kong Land Registration Ordinance, 1844. In the present case, however, the plaintiff's case was, and the learned judge found it as a fact, that no money was paid on the transfers of

shares in 1954 and 1959. On that ground alone this case is clearly distinguishable from that case.

It was said with regard to the second transfer that the learned trial judge failed to give sufficient weight to the evidence of Mr. R. G. Suppiah (D.W. 3), despite his evidence to the effect that it was his practice to satisfy himself that parties executing documents before him understood the contents thereof before execution. Mr. Suppiah surely had not said in his evidence that the money was paid in his presence or that he had ascertained from them that the money had in fact been paid. That ground of appeal therefore failed.

Another ground of appeal was that the learned trial judge in accepting the evidence of Ong Kong Pong (P.W. 4) without reservation failed to give any weight to the fact that he had apparently not claimed any dividends on the shares transferred by him right up to the date of the trial. We could not see how that was material to this case when there was ample evidence that the transfers of the shares were made at the suggestion of the second defendant's husband who was the head of the family. The same answer applied to yet another ground that the original plaintiff had not made any claim to any dividends for approximately 10 years.

The secretary of the company estimated the value of the shares to be between $3 and $4. From the evidence regarding the dividends paid, it was obvious, as the learned trial judge said in his judgment, that the shares were worth much more than twice the nominal value at which they were purported to be sold both in 1954 and 1959. His Lordship has further said: "I frankly find the evidence of the sale both in 1954 and 1959 unconvincing and incredible. One does not normally sell a goose that lays golden eggs for a little more than the price of a goose." With respect, we entirely agreed. All the brothers, including the first defendant who has been a bus conductor employed since 1949 by the bus company in which the shares are held, must be deemed to have known the real value of the shares. Even assuming that he had got the 300 shares from the original plaintiff as a gift, would he in 1959 knowing their true value have sold them at $2 per share? We did not think so.

With regard to the evidence of the second defendant, the learned trial judge had this to say:

"I found it a considerable strain on my credulity that a simple housewife, ignorant of the share market and values of shares, should without consultation of her husband accept an offer at twice the value. I disbelieved her and found that she was at all times the nominee or tool of her husband, Ong Kong Chu."

With respect, there could be no better appraisal of her evidence. We also agreed, with respect, with the following summing-up of the case by the learned trial judge:

"In my view, the truth of the matter was overwhelmingly clear. The 1954 transfers were devised by Ong Kong Chu under guise of a family arrangement to defraud his brothers of their shares, the transfer of his own shares being the cover and inducement for his brothers' transfers. There was of course no danger of loss to him, since he continued to manage the shares and to collect the dividends therefrom under the provisions of the power of attorney, the whole operation being further facilitated by his position as a director of the company. In my view, the 1959 transfer which of course did not alter his actual control of the shares was the final step on the fraud on his brothers."

On the question of fraud, it was argued on behalf of the appellant that the learned trial judge appeared to rely on his finding of fraud on the part of Ong Kong Chu (D.W. 2) as establishing the plaintiffs' case, whereas the plaintiffs' claim was based on the creation of a trust and not on the existence of fraud, and the finding of fraud does not establish or even support the existence of a trust. It is to be observed that initially, on the face of it, there was nothing fraudulent about the transfers. There was ample evidence for the learned trial judge to come to the conclusion that the transfers were made in trust. As regards the transfers of the 300 shares, which are the subject matter of this dispute, the learned trial judge, having seen and heard the witnesses, made a finding that there was no consideration for this transfer. Moreover, even assuming that there was consideration given by the appellant, surely inadequacy of the consideration, which was abundantly clear on the evidence, would be some evidence of a resulting trust. There can certainly be no question of a presumption of advancement in the case of a transfer from a brother to a brother or from a brother to his brother's wife. That, in our judgment, was a sufficient answer to the fifth ground of appeal that a transfer without consideration is incapable of establishing the existence of a resulting trust. It is exactly in those circumstances that the court must find a resulting trust in favour of the original transferor.

It is true that a transfer without consideration creates a rebuttable presumption of a resulting trust. Was this presumption rebutted on the evidence? In our judgment, it was not. That disposed of the sixth ground of appeal.

The seventh and last ground of appeal was that on the assumption that a trust was created in 1954, the learned trial judge ought to have held that the second defendant was a *bona fide* purchaser for value without notice, and consequently took the said shares unencumbered by the said trust. We were prepared to accept for the sake of argument that the second defendant might not have had notice of the trust but the learned trial judge found as a fact that she was not a *bona fide* purchaser for value. We could not see how this court could possibly disturb that finding of fact or draw any inferences adverse to that finding.

It has been said again and again that where a judge at the trial has come to a conclusion upon the question which of the witnesses, whom he has seen and heard, are trustworthy and which are not, he is normally in a better position to judge of this matter than the appellate tribunal can be, and the appellate tribunal will generally defer to the conclusion which the trial judge has formed (see *Powell & Wife* v. *Streatham Manor Nursing Home*[2]). We could find nothing in the evidence or in the learned trial judge's grounds of judgment which would justify this court in substituting its own findings in place of the trial judge's findings of fact.

We therefore dismissed the appeal with costs.

Appeal dismissed.

Solicitors: *Gibb & Co.; Cheang Lee & Ong.*

LEE KAM WAH & ANOR. v. SOU KAH PANG

[O.C.J. (Abdul Hamid J.) September 17, 1969]

[Kuala Lumpur — Civil Suit No. 1030 of 1966]

Landlord and Tenant — Rent — Claim for rent paid in excess — Subletting — "Tenant" and "landlord" — Definition of — Standard rent — Control of Rent Ordinance, 1956, ss. 3, 6 & 15.

The plaintiffs claimed certain sums as rents paid in excess inclusive of deposits. The first plaintiff stated that he was a sub-tenant of a portion of the premises in question by virtue of a written agreement made on November 1, 1957 at a rental of $85 per month. The defendant disputed this and alleged that the first plaintiff became his tenant under two written agreements dated November 8, 1960 and November 1, 1962 respectively. The first plaintiff did not produce any written agreement to support his statement, except 40 rent receipts issued by the defendant. On examination of these receipts, it was found that one set of receipts for the months December 1957 to November 1968 were in favour of another person and the other set for December 1960 to January 1965 were in the first plaintiff's name. The second plaintiff was let a portion of the said premises by the defendant with effect from September 1, 1959 at a rental of $80 per month.

The plaintiffs made separate applications to the Rent Assessment Board and two consent orders were made by the board on March 19, 1966 fixing the rents of the plaintiffs' respective portions of the said premises at $20.90 per month.

The question for the decision was what rent or rents the defendant could lawfully receive under the provisions of the Control of Rent Ordinance, 1956.

Held: to determine the maximum recoverable rent, it was necessary to know what the standard rent was. In this case the evidence showed that the said premises were let for the first time separately and as such section 6(1)(b) applied, the rents of $85 and $80 respectively were therefore standard rents in respect of those separate premises. In the circumstances, the maximum recoverable rent which the defendant might lawfully receive would be the maximum rent calculated on the basis of section 6(1)(b). Therefore the rents which the defendant received were not in excess of the lawful rent allowed under the Ordinance.

Cases referred to:-

(1) *Ho Choon Chee* v. *Leong Yee Sin* [1964] M.L.J. 44.

(2) *Chong Fong Kooi* v. *Kong Gim Hem* [1959] M.L.J. 243, C.A.

(3) *Tan Ah Seah* v. *Teo Kai Min & Ors.* [1954] M.L.J. 50.

CIVIL SUIT.

Morris Edgar for the plaintiffs.

Heng Cheng Swee for the defendant.

Cur. Adv. Vult.

Abdul Hamid J.: The first plaintiff is claiming a sum of $5,035.10 as rent paid in excess inclusive of two months' deposit. The second plaintiff is claiming a sum of $3,765.50 also as rent paid in excess inclusive of one month's deposit.

The first plaintiff states that he was a sub-tenant of a portion of premises No. 92, Brickfields Road, Kuala Lumpur (hereinafter referred to as "the said premises") by virtue of a written agreement on the first day of November, 1957 at a rental of $85 per month. The defendant disputes this fact and alleges that the first plaintiff became the tenant of that portion of the premises let to him under two written agreements (Ex. D. 2 and D. 3) dated 8th November, 1960 and 1st November, 1962 respectively. The first plaintiff does not produce any written agreement to support his allegation. He produces however, 40 rent receipts issued by the defendant. On examination of these receipts, I find that one set of receipts for the months 1st December, 1957 until 9th November, 1960 were issued in favour of Weng Wah and the other set of receipts for the months 14th December, 1960 till 12th January, 1965 were issued in favour of the first plaintiff. The second plaintiff was let a portion of the said premises by the defendant with effect from the first day of September, 1959 at a rental of $80 per month.

The plaintiffs made separate applications to the Rent Control Assessment Board and two consent orders were made by the board on the 19th day of March, 1966 fixing the rents of the plaintiffs' respective portions of the said premises at $20.90 per month.

It is not disputed that the defendant was at all material times the owner of the said premises. However, on 13th March, 1965 the defendant transferred the ownership of the said premises to his wife, Foo Kwee Fong. The plaintiffs allege that after the transfer of the ownership, the defendant held out as chief tenant.

Counsel for the plaintiffs submits that the defendant was the chief tenant and the plaintiffs were sub-tenants of the defendant and section 6 of the control of Rent Ordinance, 1956 does not apply. It is contended that the plaintiffs can legally recover a sum in excess of the rent which may lawfully be received by the defendant. Mr. Heng, counsel for the defendant submits that the plaintiffs were tenants and not sub-tenants. He further submits that the portions let out to the plaintiffs (hereinafter referred to as "the said portions") were let out separately for the first time and that these rentals were standard rent.

It is abundantly clear from the evidence that the defendant was the owner of the said premises and, it is also not in dispute that certain portions of the said premises were let separately to the plaintiffs. There is no evidence to show whether these portions were let for the first time or otherwise. In the absence of any evidence to the contrary, it is only reasonable to assume that these portions were let for the first time. It is, I think, pertinent to consider whether the said portions were let or sub-let. For sub-letting to exist, there must necessarily be a tenant or a chief tenant/sub-tenant relationship. The question is was the defendant a tenant or a chief tenant? For the defendant to be a tenant or a chief tenant, there must first be a tenant/landlord relationship between the defendant and another. There is no such thing here no matter what word is used to describe the defendant. The court is dealing with facts and not fallacies. The fact that the words "chief tenant" were used in the agreement to describe the defendant, does not in reality make him other than the owner of the said premises who lets separately certain portions of the said premises.